

1 **JASSY VICK CAROLAN LLP**
2 KEVIN L. VICK (SBN 220738)
3 kvick@jassyvick.com
4 800 Wilshire Boulevard, Suite 800
5 Los Angeles, CA 90017
6 Telephone: (310) 870-7048
7 Facsimile: (310) 870-7010

8 *Attorneys for Defendant The Poynter
9 Institute for Media Studies, Inc.*

10 **THOMAS & LOCICERO PL**
11 CAROL JEAN LOCICERO (*pro hac vice*)
12 clocicero@tlolawfirm.com
13 MARK R. CARAMANICA (*pro hac vice*)
14 mcaramanica@tlolawfirm.com
15 601 South Boulevard
16 Tampa, FL 33606
17 Telephone: (813) 984-3060
18 Facsimile: (813) 984-3070

19 -and-

20 **DANIELA B. ABRATT** (*pro hac vice*)
21 dabratt@tlolawfirm.com
22 915 Middle River Drive, Suite 309
23 Fort Lauderdale, FL 33304
24 Telephone: (954) 703-3416
25 Facsimile: (954) 400-5415

26 *Attorneys for Defendant The Poynter
27 Institute for Media Studies, Inc.*

28
12 **UNITED STATES DISTRICT COURT**
13
14 **NORTHERN DISTRICT OF CALIFORNIA**
15
16 **SAN FRANCISCO DIVISION**

17 CHILDREN'S HEALTH DEFENSE, a Georgia non-
18 profit organization,

19 Plaintiff,

20 v.

21 FACEBOOK, INC., a Delaware corporation; MARK
22 ZUCKERBERG, a California resident; SCIENCE
23 FEEDBACK, a French corporation; THE POYNTER
24 INSTITUTE FOR MEDIA STUDIES, INC., a
25 Florida corporation; and DOES 1-20.

26 Defendants.

27 Case No.: 3:20-cv-05787-SI

28 **DEFENDANT THE POYNTER
INSTITUTE FOR MEDIA STUDIES,
INC.'S RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION TO
FURTHER SUPPLEMENT ITS
SECOND AMENDED COMPLAINT
AND FOR *IN CAMERA* INSPECTION**

TABLE OF AUTHORITIES

Cases

<i>Allen v. City of Beverly Hills</i> , 911 F.2d 367 (9th Cir. 1990)	1
<i>Armstrong v. Scribner</i> , No. 06cv852 L(RBB), 2008 WL 268974 (S.D. Cal. Jan. 30, 2008)	1
<i>Beezley v. Fremont Indem. Co.</i> , 804 F.2d 530 (9th Cir. 1986)	1
<i>Gardner v. Martino</i> , 563 F.3d 981 (9th Cir. 2009)	1

1 Defendant The Poynter Institute for Media Studies, Inc. (“Poynter”) hereby files this
 2 Response in Opposition to Plaintiff’s Motion to Further Supplement its Second Amended Complaint
 3 and for *In Camera* Inspection (Dkt. No. 103, the “Motion”), filed on June 7, 2021.

4 This is Plaintiff’s second attempt to supplement its Second Amended Complaint since the
 5 parties filed their motions to dismiss the SAC (*see* Dkt. 76), and the fifth overall time it has sought
 6 to modify its complaint since its original filing in August of 2020. Plaintiff’s latest attempt to move
 7 the goalposts, this time after the parties’ motions to dismiss have been fully submitted and oral
 8 argument was had, should not be permitted.

9 As to this latest filing, the proposed additional allegations and request to review unredacted
 10 copies of emails between Dr. Anthony Fauci and Mr. Zuckerberg change nothing with respect to
 11 the claims made against Poynter. They simply are not directed toward any alleged Poynter activity,
 12 nor do they in any way implicate Poynter or the third-party fact checking process that Plaintiff
 13 complains of in this case. Therefore, once again, permitting the supplement as to Poynter would be
 14 futile. *See Beezley v. Fremont Indem. Co.*, 804 F.2d 530, 530-31 (9th Cir. 1986) (affirming denial
 15 of motion to supplement complaint where plaintiff failed to allege any new facts that would entitle
 16 him to relief); *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009) (“When a proposed
 17 amendment would be futile, there is no need to prolong the litigation by permitting further
 18 amendment.”) (internal quotation omitted); *Allen v. City of Beverly Hills*, 911 F.2d 367, 373-74 (9th
 19 Cir. 1990) (“The district court’s discretion to deny leave to amend is particularly broad where
 20 plaintiff has previously amended the complaint.”); *Armstrong v. Scribner*, No. 06cv852 L(RBB),
 21 2008 WL 268974, at *26 (S.D. Cal. Jan. 30, 2008) (“The Court may deny a motion to file
 22 supplemental pleadings when supplementation would be futile, such as where the newly-asserted
 23 claims would not survive a motion to dismiss.”).

24 More broadly, the proposed supplemental allegations and requests for *in camera* inspection
 25 have no relevance to *any* of the claims in this litigation against *any* of the defendants. Facebook
 26 and Mr. Zuckerberg have addressed this more fully in their opposition to the Motion (*see* Dkt. No.
 27

1 104). Poynter hereby adopts and incorporates the arguments set forth in that opposition as if fully
2 stated herein.

3 CHD's continual gamesmanship of filing request after request to supplement its pleadings
4 and take judicial notice of irrelevant court decisions (*see, e.g.*, Dkt. Nos. 97, 102), all in an effort to
5 delay adjudication of the parties' pending motions to dismiss, must end here. CHD has been afforded
6 every opportunity to fully plead its case, including amending its complaint after reviewing the legal
7 arguments raised by the parties in the motions to dismiss the original complaint. Poynter (and all
8 defendants) should not have to incur constant, additional expense responding to CHD's repetitive
9 attempts to inject even more irrelevant matters into this case.

10 For the foregoing reasons, Poynter respectfully requests that the Motion be denied, or, if
11 granted, that CHD's Second Amended Complaint be dismissed with prejudice because the
12 supplemental allegations fail to cure the fatal defects that are the subject of the pending motions to
13 dismiss.

14
15 Dated: June 21, 2021

JASSY VICK CAROLAN LLP

By: /s/ Kevin L. Vick
KEVIN L. VICK

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17 **THOMAS & LOCICERO PL**

By: /s/ Carol Jean LoCicero
CAROL JEAN LOCICERO

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20 Attorneys for Defendant, *The Poynter Institute*
for Media Studies, Inc.

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing. Pursuant to Civil Local Rule 5-1(i), I hereby attest that the other signatures have concurred in this filing.

Dated: June 21, 2021

By: /s/ Kevin L. Vick
Kevin L. Vick

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2021, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Dated: June 21, 2021

By: /s/ Kevin L. Vick
Kevin L. Vick